

OFFICE OF THE ATTORNEY GENERAL



91-00303

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JUN 18 1991

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Honorable Wallace Wyatt, Jr.
Judge of Probate
Courthouse: 6th Street
Ashville, AL 35953

Municipalities - Sales Tax - Use
Tax - Motor Vehicles Tax

Section 6-30, et seq., Pell City Code, imposes a license tax and an excise tax on the sale of automotive vehicles and truck trailers, even where such sales are consummated outside the city limits of Pell City but used inside the city. The taxes imposed are levied upon residents and businesses located inside the city limits of Pell City. In construing those sections with Section 40-23-101, et seq., Code of Alabama 1975, the collection of the taxes levied devolves upon the tax collector.

Dear Judge Wyatt:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTIONS PRESENTED

- (1) Do the enclosed taxes adopted by the City of Pell City impose a use tax on the sale of automotive vehicles and

- truck trailers where such sales are
 - consummated outside the city limits of Pell City but used in the city?
- (2) Does the enclosed tax impose a use tax on the residents and businesses located inside the city limits of Pell City?
- (3) Does the enclosed tax, along with § 40-23-101 through 104, Code of Alabama 1975, require the Probate Judge of St. Clair County, wherein the municipality of Pell City is located, to collect such taxes on vehicles used or stored therein?

FACTS AND ANALYSIS

The taxes imposed by §§ 6-30 and 6-33 of the Pell City Code apply only to residents and businesses located inside the city limits of Pell City.

Section 6-33(c) levies an excise tax upon "the storage, use or other consumption in the city of any automotive vehicle or truck trailer, semitrailer or house trailer purchased at retail on or after the effective date of this article for storage, use or other consumption in the city at the rate of three-fourths (3/4) percent of the sales price of any such automotive vehicle, truck trailer, semitrailer or house trailer within the corporate limits of said city." (Emphasis added.)

Any automotive vehicle or truck trailer, semitrailer or house trailer purchased at retail which is stored, used or consumed within the city limits of Pell City would be subject to the use tax levied under § 6-33(c).

The statute attached to your request for an opinion levies a "privilege or license tax" upon persons or other entities "engaged, or continuing within the city in business of selling at retail . . ." (Emphasis added.) Section 6-33 levies "excise tax" on the storage, use or other consumption "in the city" of tangible personal property. Subsection (d) applies to the storage, use or other consumption "in the city" of farm machines or equipment "for the storage, use or other consumption in the city at the rate of three-fourths (3/4) percent of the sales price of such property within the

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corporate limits of said city, regardless of whether the retailer is or is not engaged in the business in this city." (Emphasis added.)

Section 40-23-100, et seq., Code of Alabama 1975, requires taxes on the sale, storage, and use of automotive vehicles to be "collected by the tax collector before the registration of or licensing of any such automotive vehicle . . . by the judge of probate." Section 40-23-104(a).

Sections 6-32 and 6-34 make the taxes levied by Sections 6-30 and 6-33 subject to all definitions, exceptions, exemptions, etc., that are applicable to state sales tax statutes, "except where inapplicable or where herein otherwise provided. . . ." Since §§ 6-30 through 6-35 of the Pell City Code do not address what officer is required to collect the taxes, the requirements of § 40-23-104(a), Code of Alabama 1975, apply. Therefore, the taxes levied under the Pell City Code in § 6-30, et seq., are to be collected by the tax collector.

CONCLUSION

The taxes adopted by the City of Pell City and codified in § 6-30, et seq., of the Pell City Code impose an excise tax on the sale of automotive vehicles and truck trailers, even where such sales are consummated outside the city limits of Pell City but used inside the city. The taxes imposed are levied upon residents and businesses located inside the city limits of Pell City. In construing Sections 6-30 through 6-35 of the Pell City Code with § 40-23-101, et seq., Code of Alabama 1975, the collection of the taxes levied devolves upon the tax collector.

I hope this letter sufficiently answers your questions. If this office can be of any further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By-


JAMES R. SOLOMON, JR.
Chief, Opinions Division

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